Progress reported, and leave given to sit again.

ADJOURNMENT.

The House adjourned at 11·5 p.m. till the next day.

Legislative Council.

Tuesday, 7th December, 1897.

Paper Presented: By-laws of Perth Municipal Council—High School Act Amendment Bill: third reading—Sale of Liquors Act Amendment Bill: second reading—Steam Boilers Bill: third reading—Employment Brokers Bill: in committee (resumed)—Industrial Statistics Bill: in committee—Circuit Courts Bill: first reading—Public Notaries Bill: first reading—Workmen's Lien Bill: first reading—Criminal Appeal Bill: second reading—Immigration Restriction Bill: in committee—Adjournment.

THE PRESIDENT took the Chair at 4·30 o'clock, p.m.

PRAYERS.

PAPER PRESENTED.

By the MINISTER OF MINES: Copy of By-laws of Perth Municipal Council.

HIGH SCHOOL ACT AMENDMENT BILL.

Read a third time, and *passed*.

SALE OF LIQUORS ACT AMENDMENT BILL.

SECOND READING.

THE MINISTER OF MINES (Hon. E. H. Wittenoom), in moving the second reading, said: This small Bill has been introduced chiefly for dealing with the adulteration of liquor. It is not a long Bill, and I think every one will agree that it is time some step be taken to see that the public are supplied with liquor that is palatable and good. This is an amendment of other Acts in connection with the sale of wines, beer, and spirits; and it will repeal some of the clauses of the old Acts and alter others. It is divided into three parts. The first part deals with the adulteration of liquors, the second with the compulsory transfer of licenses, and the third with miscellaneous matters. The first part begins with a definition of spirits at proof and underproof. It provides for the appointment of a public analyst, to be at the disposal of any person who wishes to have a sample of liquor analysed upon payment of £1. By paying that fee a person can have any samples analysed he likes to submit. The penalty for selling adulterated liquor under this Bill is fixed for the first offence at not less than £10 and not exceeding £50. A second conviction, however, is a much more serious matter, as it means six months' imprisonment with the possibility of the offender not being allowed to hold a license again for three years. A defence may be set up to the adulteration of liquor that it is due to the addition of 25 parts of water, and not to spirits or poisonous substances, such as tobacco, vitriol, etc. The weakening of alcohol with water is not considered so great an offence as adulterating it with poisonous substances. A justice of the peace or police officer may demand samples from a seller of wine, beer, or spirits at any time, and provision is made for taking these samples away for analysis. Care is to be taken that the samples are securely fastened up so as not to be tampered with. Any one who refuses to give samples to those who are authorised to demand them, or in any way obstructs people from procuring them, may be subjected to a penalty of £50. A prosecution may be commenced against any licensed person within three months of the time of the offence. This seems to me rather a questionable portion of the Bill. Three months seems rather a long period to keep a matter of this kind standing over one's head. It is for hon. members to say whether they desire to amend the Bill in this respect or not. Any person who forges a certificate in connection with this Bill in any way is liable to two years' imprisonment. In the event of a licensed person being found guilty of supplying bad liquor to any one, he may recover the cost of the suit and the fine from the person from whom he purchased the liquor, if he can prove that he sold the liquor in the same way as he received

it, not knowing it to be adulterated. The second part of the Bill deals with the transfer of licenses. It is to enable a hotel-keeper to transfer his license. Hitherto there has been some difficulty in connection with this. This Bill will do away with that difficulty, and amend the existing Act so as to facilitate the transfers of licenses. In the miscellaneous portion of the Bill there is an alteration in regard to the license fee for hotels which, in the Perth and Fremantle electorates, is raised to £70. In the magisterial districts of Perth and Fremantle the sum of £50 will be charged, as also at Coolgardie, Kalgoorlie, and the Boulder. In other portions of the colony the license fee still remains at £40. If an applicant has been refused a license, he cannot apply again within six months, and if the Licensing Board make it a condition at the time, he cannot apply within twelve months. Power is given to the Government to appoint inspectors of licensed houses. This will no doubt be a movement in the right direction, and will ensure that the houses will be better looked after in the future than they have been in the past, and that care is taken as to the way the houses are occupied. The provisions and penalties of this Bill apply to all dealers in wines, beer, and spirits, grocers, and others. Clause 22 amends the principal Act in connection with penalties for selling on Good Fridays and Sundays. In the principal Act the penalty for offences under this head is fixed at £50, but in the Bill the fine is a sum 'not exceeding" £50, thus giving the bench discretion. Clause 23 raises the age at which children are allowed to be supplied with drinkables from 14 to 16 years. Hon. members have no doubt made themselves conversant with the Bill, and therefore I need not further deal with the clauses in moving the second reading.

HON. F. T. CROWDER moved that the debate be adjourned until the following Thursday.

Put and passed, and the debate adjourned accordingly.

STEAM BOILERS BILL.

Read a third time, and transmitted to the Legislative Assembly.

EMPLOYMENT BROKERS BILL.

IN COMMITTEE.

Consideration in committee resumed.

Clause 5—agreed to.

THE MINISTER OF MINES said Mr. Kidson, who took an interest in this Bill, had tabled a number of amendments, many of which he (the Minister) was prepared to adopt. In the absence of Mr. Kidson, however, he moved that progress be reported.

Progress reported, and leave given to sit again.

INDUSTRIAL STATISTICS BILL.

IN COMMITTEE.

Clause 1—agreed to.

Clause 2—Interpretation:

HON. A. P. MATHESON, in accordance with notice, moved, as an amendment, that all the words after "employed," in the second line of page 2, be struck out. This was the clause which defined an "industrial establishment" as "any factory, workshop, or mill," etc.; and "any mine, which has been worked at any time during the year, whatever be the number of persons employed;" and it was the provision as to mines he desired should be struck out. He had no objection to mine owners being required to return statistics, which no doubt would prove extremely valuable. But at present every mine owner or mine manager was compelled to make returns to the warden, who had a right at any time to call for any statistical information he chose. The Mines Department might reasonably be expected to allow the statistical information thus obtained to be used for the purposes of this Bill. It was not fair that the mining industry should be singled out for perpetual persecution in the matter of returns.

THE MINISTER OF MINES (Hon. H. E. Wittenoom) said he could not admit that the mining industry was singled out for persecution. All that was desired was to get information necessary to show the importance of this country, and of the mining industry. To some extent he agreed with the amendment. No doubt a number of returns obtained by the Mines Department could be supplied for the purposes of this Bill. But it would seem from Clause 13, which set out the information required from the

head of an industrial establishment, that all the information required was not the same as that obtained by the Mines Department. It might be of importance to have information, as provided in Subclause 1 of this clause, showing what workmen were employed in mines, and how, and at what ages.

HON. A. P. MATHESON: If the information asked for in this sub-clause was really necessary for statistical purposes, the warden might obtain it and hand it on to the statistical department.

THE MINISTER OF MINES: It might be done in that way.

Amendment put and passed, and the clause as amended agreed to.

Clauses 3 to 9, inclusive—agreed to.

Clause 10—If forms are not delivered, persons requiring to make returns must apply at nearest police station for forms:

HON. R. S. HAYNES: This clause seemed a new departure; and he did not know any Act of Parliament in which there was a similar provision. It was impossible to form an idea of what was intended by the draftsman of this clause. All these clauses were taken from the New South Wales Act, except Clause 10. The gentleman charged with the drafting of the Bill had made a complete stride for himself in this clause, and asked Parliament to define what the duty of a person should be. Was Parliament to pass legislation to define the duty of persons? If an Act of Parliament provided that it should be the duty of a person to do a certain thing, what was to be the effect of a breach of it? What was the use of defining the duty of a person? Would it not be better to tell people to do certain things, without defining their duty?

THE MINISTER OF MINES: The clause was quite right. That was the right way. At the same time, he would be glad to accept an amendment.

HON. R. S. HAYNES: These Bills were brought down in a way that made the Legislature the laughing-stock of other colonies. The Minister should see that Bills were properly drafted.

THE MINISTER OF MINES: This Bill had been passed by the other House.

HON. R. S. HAYNES: The Cemeteries Bill had been passed by the other House, and it had been found necessary in this House to make over 60 amendments in it. He did not think it was fair to leave in this clause, because whenever there was a duty cast upon a person by Act of Parliament, that person was liable to a penalty for not fulfilling it.

HON. C. E. DEMPSTER: There was no penalty named here.

HON. R. S. HAYNES: Why should not the Government deliver the forms? If the Government did not take the trouble to do so, why should they cast the duty upon the farmers to go post-haste to the nearest police-station to obtain the forms with which the officers of the department should have supplied them? He did not see why we should cast upon the farmers a duty which was not cast upon any other section of the community. The census forms were all delivered, and the Government did not prosecute any one for not obtaining a form when the inspector did not leave one. If the Government official, however, neglected his duty in this case, the farmer was called upon to perform it for him. The Bill first defined what a man's duty was, and though it did not punish him for that, it afterwards provided a penalty of not exceeding £20, for neglecting to procure and fill up the forms. He moved that the clause be struck out.

HON. A. H. HENNING denied that the provisions of the Bill were not paralleled in any other statute, as stated by Mr. Haynes. Eighteen months ago the Council passed an Act empowering the Government to collect statistics with regard to mining, and provided that an inspector could inspect the plans kept by mine owners. The Council had since repealed that, and had cast the onus on the mine owners of keeping certain returns certified and guaranteed at their own expense, under a penalty. He submitted that the provisions of this Bill were analogous to those which the Council had adopted in reference to mine owners.

THE MINISTER OF MINES said he had not looked into this clause very carefully, because it had gone through the Legislative Assembly, and had there passed under the critical eyes of legal members of that House.

HON. R. S. HAYNES: So did the Cemeteries Bill.

THE MINISTER OF MINES: This Bill had been before the Council for a

week. It was important that these statistics should be collected. We had suffered in the past from not having correct statistics in connection with our agricultural development, so that it was hard to say at what pace we were going. This clause simply provided that if a farmer did not receive a form, he should get one for himself and fill it up.

HON. R. S. HAYNES: He might be 50 miles from a police station.

THE MINISTER OF MINES: Wherever it was possible, the people would be supplied with these forms. At present the police went from house to house and collected information. He did not think there would be any very great difficulty in carrying out the clause. It provided, in the first place, that if at the end of the first week in January people had not obtained a form, it would be their duty to apply for one, and, in the second place, if by the last week in February the collector had not been round, it should be the duty of the people to deliver the information or forward it by post. That was exactly what the clause said. If the hon. member would undertake to draft a clause to meet these conditions he would be very happy to postpone the consideration of the present clause with the consent of hon. members; but, in default of that, he hoped the committee would not allow the clause to be struck out.

HON. A. P. MATHESON said he entirely agreed with Mr. Haynes, and had prepared a speech exactly on the lines on which the hon. member had addressed the committee. He had been lulled to security by the apparent absence of any penalty. He had thought it useless to waste the time of the committee by discussing a point for the neglect of which no penalty was provided; but, as the hon. member had pointed out, under Sub-clause *(a)*, Clause 15, there was a possible penalty of not exceeding £20 if a man did not procure the forms and fill them up. The Bill would become operative on the 1st January of the coming year. What chance was there of people in the remoter districts hearing of the Bill. And yet, for non-compliance with this clause, they would be rendered liable to a fine not exceeding £20.

HON. G. RANDELL: It was impossible to comply with the provisions of the Bill by the time stated.

HON. A. P. MATHESON said he had searched for a precedent, and the only parallel he had been able to find to the clause before the committee was the edict of the Roman emperor, in the days of Herod the Tetrarch, who required every man to go up and be taxed.

HON. R. S. HAYNES joined issue with Mr. Henning, who had stated that the Council had approved of the principle contained in this clause by passing the Mines Regulation Bill. That Bill provided that accurate information should be supplied, but it did not provide that a man should go to the nearest police station to procure a form if the Government did not supply him with one. The Government should send out properly qualified inspectors, who should call at every place, and not cast the duty upon farmers, living perhaps 100 miles from a police station, to ride in and obtain forms with which the inspector had neglected to provide them.

HON. D. McKAY said he quite agreed with Mr. Haynes.

HON. C. E. DEMPSTER supported Mr. Haynes's motion, as it would be a great hardship to compel farmers who had not received the forms, under a heavy penalty, to procure them.

THE MINISTER OF MINES: More had been made out of the objections to the clause than the clause deserved. There was just a chance of a few forms not being delivered, but if the committee rejected the clause, they would be doing away with the obtaining of full and accurate information such as the Minister of Lands required. He had a large station in a very remote part of the colony, and he did not fear that any difficulty would be likely to arise. He asked the committee to support the clause as it stood.

HON. G. RANDELL: It was not possible to bring the Bill into operation this year, as the machinery could not be provided in time. There was a great deal in the clause which should remain, as it was desirable that full and accurate information should be obtained. If the Bill passed in its present form, it would be desirable afterwards to move that it should not come into operation until a very much later date.

HON. H. G. PARSONS: This was a question for the representatives of the in-

dustries immediately concerned. In the matter of isolated mines, this Bill would have been a dead letter, and it was always inadvisable to pass an inoperative measure. The onus was necessarily on the Government in the first place, and it was a very serious matter to leave thousands of people at the mercy of the nearest magistrate in any case which might involve very heavy expense, even although a merely nominal fine were imposed.

THE MINISTER OF MINES: The question was whether if, inadvertently, persons interested were not supplied with papers, those persons had themselves to forward the information. If the information was not supplied by some means or other, the rest of the statistics would be rendered useless, because incomplete.

HON. A. P. MATHESON asked how the people interested, if inadvertently they were not supplied with papers, would know they had to make a return.

THE MINISTER OF MINES: The officers in the country would know that the papers had not been supplied.

HON. R. S. HAYNES: The cure was in the hands of the Government, who had only to send papers to everybody concerned. There was only a month in which to fill up the papers and return them, and it was proposed to punish people for the neglect of the Government. There were stations 300 and 400 miles away from a police station, and if the owners of those stations were not supplied with forms, it would be inhuman to fine them because they did not supply the required information.

HON. H. BRIGGS: If the men employed to do the work under the Bill neglected their duties, it would be very hard to subject a pastoralist, on that account, to a fine. The onus of delivering the forms ought to be on the police. It would be the distant stations that would be neglected, because the police would find it very inconvenient in hot weather to go far into the interior for the purpose of delivering forms. He would like to see the clause so amended that the application for forms could be sent by post.

THE MINISTER OF MINES: It did not matter how the forms were applied for.

HON. F. T. CROWDER: If the committee, by carrying this clause, would inflict an injustice on pastoralists and agriculturists, then a far greater injustice had been inflicted on the mining community in requiring them to furnish the warden with any information he liked to ask for.

THE MINISTER OF MINES: Application could be made for the forms by letter, or in any other way, and till the end of February was given in which to make the return. It was not to be supposed that a magistrate would inflict a fine in a case where a pastoralist or agriculturist was not to blame for the absence of returns.

HON. G. RANDELL moved that after the word "same" in the fifth line the words "by letter or otherwise to the nearest" be inserted. This would enable persons interested to send their applications to the nearest police station by post.

HON. R. S. HAYNES: There were stations 100 and 200 miles away from police stations, and mails might run only once a month. The danger was that the forms would not reach the people in time, and then under this clause injustice might be done.

HON. A. B. KIDSON said he would vote for the clause, subject to the amendment of Mr. Randell, if the Minister of Mines would extend the time for sending in the returns from the end of February till the end of March. It would only be odd cases in which the forms would not reach their destination, and it was those odd cases the clause was intended to cover.

THE MINISTER OF MINES: There was no objection to the extension of time suggested by Mr. Kidson.

Amendment (Mr. Randell's) put and passed.

HON. A. B. KIDSON moved, as a further amendment, that the word "February" in sub-clause 2 be struck out, and the word "March" inserted in lieu thereof. This was to provide for an extension of time for the sending in of returns.

Put and passed, and the clause as amended passed on the voices.

Clause 11 — Returns required from owners and occupiers of land:

HON. G. RANDELL moved as an amendment that after the word "concerning," in the 3rd sub-clause, the following words be inserted: "the labour engaged

in connection therewith and." It was desirable that the number of persons engaged in agricultural and horticultural pursuits should also be ascertained.

THE MINISTER OF MINES: There was no objection to the amendment.

Put and passed, and the clause as amended agreed to.

Clause 12—agreed to.

Clause 13—Returns required from head of industrial establishment:

HON. G. RANDELL: The information required by the clause was not applicable very much to circumstances in this colony at present, or in the immediate future; and it would be impossible for an engineering or similar firm, carrying on business here, to give the required information. The fourth sub-clause, which required the head of an establishment to give information concerning the capital embarked in the business, should be struck out.

HON. A. P. MATHESON: The clause, generally speaking, did not entail a greater hardship on the manufacturing establishment than previous clauses entailed on the agricultural and pastoral industries. But Sub-section 4, which required information concerning the capital embarked in the business, should be struck out. Without going into the broader question as to whether the State had a right to demand such information, this was just a subject on which a person was not likely to tell the truth. He did not think the inspector would call on him to substantiate the return made, but it was possible the inspector might do so; and he would like to suggest this phase of the question to hon. members, and ask them what their feelings would be if an inspector should compel them to appear before a magistrate and cross-examine them in open court as to the amount of money sunk in their business, what was charged in one direction or another, whether they were in difficulties, and whether they had an overdraft or a credit balance. He thought hon. members would readily see that the clause was absolutely inadmissible.

HON. G. RANDELL: The objection would also apply to the value of lands.

HON. A. P. MATHESON: Not with the same force, because a collector could employ a valuator to make a return of the value of the land, whereas he could not make an estimate of the value of the capital. He (Mr. Matheson) moved that sub-clause 4 be struck out.

THE MINISTER OF MINES said he was sorry to hear the hon. member talk of the hardships to be inflicted by the operation of the Bill. One would think that the Government were doing their utmost to injure people, instead of trying to obtain accurate returns of the resources of the colony. Mr. Matheson seemed to imply that the Government were acting in a hostile way for the purpose of harming the squatter and the farmer. The Government were not given any credit for their good intentions. The only object the Government had in view was to pass a Bill that would enable them to obtain accurate and reliable information. It would be a very great advantage to know the correct amount of capital embarked in business here.

HON. R. S. HAYNES: The information would be inaccurate.

THE MINISTER OF MINES: The information would be as accurate as could be got. As to the Bill being inquisitorial, a penalty was provided for divulging secrets.

HON. H. BRIGGS: The industrial occupations of the colony were in their infancy, and returns from the industries asked for in the Bill would be a great advantage. In regard to Sub-clause 4, which demanded returns of the amount of capital embarked, this was inquisitorial. He was quite sure that the returns would be inaccurate, and he would therefore support the amendment.

HON. A. B. KIDSON said he would also vote for the amendment. He considered the sub-clause as inquisitorial in its character, and that there was not the slightest chance of correct returns being furnished. It might be very injurious to some persons to have it known what capital they possessed.

Amendment—that Sub-clause 4 be struck out—put and passed.

Clause, as amended, agreed to.

Clause 14—agreed to.

Clause 15—Penalties:

HON. R. S. HAYNES: By making an addition to this clause, the committee might be able to get over the difficulty with regard to farmers and others procuring forms. Mr. Randell had suggested that the penalty proposed to be inflicted

on those who neglected to procure the forms, when not furnished by the inspector, might be avoided if these persons were allowed to apply for them by letter. He therefore moved that the following words be added at the end of the clause:—

Provided that any person to whom the forms have not been delivered, but who has applied for or posted a letter in pursuance of and within the time limited by Section 10, Sub-section 1, demanding a form or forms, and has not received the same, and also any person who shall have posted the returns within the time limited by Section 10, Sub-section 2, shall be deemed to have complied with the requirements of this Act, and on that behalf shall not be liable to the above penalty.

HON. A. B. KIDSON: The letter should be registered.

HON. R. S. HAYNES: Letters could not be registered in certain parts of the country.

THE MINISTER OF MINES moved that progress be reported and leave asked to sit again, so that he might consider the amendment which had been moved.

Progress reported, and leave given to sit again.

THE MINISTER OF MINES: If hon. members had any amendments to suggest, he would be glad if notice were given in time, so that they could be printed and considered before the House met again. That morning a very long list of amendments was placed before him at so short a notice, that he had not had time to consider them properly.

HON. A. B. KIDSON: The amendments referred to had been tabled by himself, and had been given to the assistant clerk on Friday, who informed him that the business paper had already been printed, and that these amendments would have to be printed separately. The delay had not, therefore, been his fault.

THE PRESIDENT stated that the Notices and Orders of the Day were sent from the Council immediately the House rose at night, so that they came out the first thing on the following morning. That was why the amendments referred to by the hon. member could not appear on the paper in question.

CIRCUIT COURTS BILL.

Received from the Legislative Assembly, and read a first time.

PUBLIC NOTARIES BILL.

Received from the Legislative Assembly, and read a first time.

WORKMEN'S LIEN BILL.

Received from the Legislative Assembly, and read a first time.

At 6·23 p.m. the PRESIDENT left the Chair.

At 7·30 p.m. the PRESIDENT resumed the Chair.

CRIMINAL APPEAL BILL.

SECOND READING.

HON. A. B. KIDSON, in moving the second reading, said: The principle of this Bill is one which, I am sure, will commend itself to hon. members. The object is to extend the very strictest justice and impartiality to those persons who bring themselves within the criminal law of the colony; and the principle of the measure is that a sentence passed by a judge on criminals in the Supreme Court shall be open to revision on appeal. There are other principles involved, which it is not necessary for me to refer to much in detail, as the law in connection with them is practically already in force. The question of criminal appeals has, for the last 20 years, been agitating the mind not only of the public, but also of the judges in the old country. In 1892, on the recommendation of the Lord Chancellor, a council of all the judges at home was held to consider the advisability of creating a criminal court of appeal. As a result of that council, the judges sent to the Lord Chancellor certain recommendations. In 1890, Sir Henry James, now Lord James of Hereford and a Lord of Appeal, introduced a Bill in the House of Commons having precisely the same object as the Bill now before this House. Owing to pressure of business in the House of Commons, that Bill did not become law, but last year the recommendations made by the council of judges were embodied in a Bill, and introduced in the English Parliament. Although the latter Bill did not become law the second reading was agreed to by a majority of about 150, so that the principle may be regarded as having been practically adopted by the

House of Commons. The reason the Bill did not become law was that the business in the British House of Commons is almost always more or less in a congested condition, and it is a matter of the very greatest difficulty to get a Bill of this nature through, when it is not a Government measure. I have always taken a deep interest in this question, and I sent to England for a draft of the Bill to which I have just referred. In regard to the present Bill, I have the co-operation of Mr. Haynes, whose opinion is of great weight, seeing that he has had a larger and wider criminal practice in this colony than perhaps any other member of the legal profession. The principle of the Bill involves the liberty of the subject. However impartial or full of integrity judges may be, yet it is beyond the bounds of reason for a moment to think that two judges could have precisely similar views in regard to sentences passed. Judges are only human beings, and are bound to differ to a certain extent; and it is to get over the difficulty occasioned by that difference that the Bill is introduced. When a sentence is imposed by a judge, the criminal on whom it is passed should have the right of appeal for the purpose of having the sentence revised. A safeguard against frivolous appeals is provided in a clause which sets out that, if the Appeal Court are of opinion the appeal should not have been made, or that the sentence passed in the first instance was not sufficient, they may, instead of decreasing the sentence, increase it. One hon. member is under an impression that under this Bill a criminal would be at liberty to appeal and continue appealing. That, however, is not the case. A criminal can appeal only once, and the decision of the Appeal Court is absolutely final. It is only right, according to the principles of justice, that even a criminal should have the same justice and same rights as an ordinary individual, to the extent that a criminal should not have an hour or a minute more imprisonment than he is entitled to receive. One of the great principles of the British Constitution, and also of the Constitution in this colony, is that every person, whether of the highest or the lowest, should receive absolute justice. With regard to other criminal appeals, the Bill leaves the law practically as at present. The judge, at the hearing of a criminal case, may reserve certain points of law for the Court of Appeal. There is another innovation in the Bill which I think a good one. There may be an appeal against a sentence or a hearing, but that appeal can be heard only with the consent of the Attorney General, who will be a sufficient safeguard against any abuse of the measure. As usual in such Bills, power is given to the judges to make rules providing machinery for carrying out the Bill. As purely and simply a principle of equity and justice, there is no reason why a criminal should not have the right of appeal against a sentence inflicted on him, just as much as an ordinary individual has the right of appeal in a civil action. The liberty of the subject is vastly more important than the rights of property; and, at any rate, the passing of this Bill cannot possibly do any harm. However much judges may consider they are right in passing certain sentences, yet judges do differ, and it is only right there should be established, if possible, some sort of power to balance sentences. That is the feeling which prompted the British public and the judges in the old country to take the course they did; and speeches have been delivered by the Lord Chancellor, urging as strongly as possible the advisability of allowing appeals against criminal sentences. When we have a recommendation of that kind from such a source, and also from the council of judges, and from the members who supported this legislation in the British House of Commons, it ought to carry some weight in this House. I have heard persons remark that this legislation is a bit advanced for this colony. But that remark has been made in regard to other measures introduced in this Parliament. No measure can be too advanced for any place, particularly in a British dependency, which has for its object the maintenance of right and justice. No man should have a greater sentence than that which is commensurate with the offence he has committed. This has been felt in England as a matter of grave consideration, perhaps of graver consideration than in this colony, having regard to the larger population and larger proportion of criminals in the old country. The necessity for a Criminal Appeal Bill must have been strongly felt before the judges and

the Lord Chancellor, and those persons who introduced the Bill in the House of Commons, took this matter up in the way they did. If the principle of the Bill is good enough for the old country, it is good enough for us here. The fact that it bears the hall-mark of the British House of Commons is one of the strongest points in its favour, especially when, in addition to the difficulty of getting any private Bill passed in England, it is considered that at the time the principle was approved, a Conservative Government was in office. One of the greatest safeguards of the Bill is that the judges will not have the power of altering the judgment against which criminals may appeal, unless there are very grave reasons for doing so. With regard to the present Bill, the only two alterations in the law are, first, that a prisoner on the criminal side of the Supreme Court only can appeal against a sentence once, and, secondly, he may appeal against the hearing of the case, but in that event the appeal can only be heard with the consent of the Attorney General. You may be perfectly certain that he would not give his consent to an appeal unless there were very grave grounds for doing so, and therefore the only appeal a prisoner will have in addition to the appeal he has now—that is to say, on the point of law reserved by the judge--will be against the sentence inflicted upon him. I can imagine no argument against that. It is only endeavouring to give the very strictest justice to those requiring it. The Bill provides that the Court of Appeal shall be constituted of two judges of the Supreme Court, so that the *personnel* of the Court will not be altered at all. The appeals will be heard as soon as possible, so as not to keep people in gaol longer than they should be. The Bill provides that no criminal shall be flogged till ten days after the sentence is imposed, so as to enable him to appeal against it. This does not apply to capital sentences, where it is not necessary, and only gives the right of appeal in criminal cases once, no further appeal being allowed. Sentences frequently differ, and the object of the Bill is to equalise them as far as possible for the offences perpetrated. Section 6 provides that the Criminal Appeal Court shall consist of not less than two judges. There are only three judges, and it would not do to compel them all to sit on appeals, as their presence might be required elsewhere. There is another safeguard in the Bill. The right of appeal against a sentence is not only vested in a criminal, but also in the Attorney General on behalf of the Crown. Supposing a sentence is given which the Crown considers inadequate to the offence perpetrated, the Attorney General has the right of appeal to have the sentence revised, so that the balance is held fairly on both sides. Either the criminal can appeal to have his sentence reduced, or the Crown can appeal to have it increased. It is unnecessary for me to refer further to the provisions of the Bill, as they are of a purely technical character.

HON. J. E. RICHARDSON: After sentence, pending an appeal, what becomes of the prisoner?

HON. A. B. KIDSON: The prisoners will go to prison, or may be allowed bail.

HON. J. E. RICHARDSON: It might keep the judges going.

HON. A. B. KIDSON: Not more than now, because the safeguards are as strong as they can be, and the judges are not likely to allow sentences to be reversed or altered unless there is an absolute necessity for it being done. This Bill is not my own idea. I hold in my hand the draft of a measure introduced into the House of Commons with the recommendation of the Council of all the judges in England, and also recommended by the Lord Chancellor, which passed the second reading in the House of Commons. Does not that stamp it and hall-mark it as being one which would not only be suitable to that country, but suitable to any of the British dominions wherever English law is enforced? I do not think any Bill has ever been brought forward which has borne such recommendations as this Bill has. It is no new-fangled notion. It has engaged the attention of the leading men in England for a number of years, and the only objection I have heard urged against it is that it is too advanced. That objection did not come from inside the House, but from outside, but I do not think that legislation which promotes justice and equity can be too advanced.

HON. C. E. DEMPSTER: Who bears the cost of the appeal?

HON. A. B. KIDSON: The party interested.

HON. C. E. DEMPSTER: Supposing he has not the means?

HON. A. B. KIDSON: Then he would be unable to appeal, unless he could get his friends to be responsible for him. He would not be likely to stake his funds on an appeal, unless he felt that there was very good ground for it. In conclusion, I ask hon. members to support the second reading because, even if the Bill does not pass this session, it will have received the sanction of the Council, which would only be following the example of the British House of Commons, that great model which we would do well to imitate.

HON. R. S. HAYNES: I have given the Bill careful consideration, and, however adverse I might be to the introduction of new legislation affecting a system of jurisprudence which has been in force for so many hundreds of years, I should be wrong to vote against this Bill, the principle of which is good. If a man be cast in damages for say £500 for a libel, he has an appeal to the Supreme Court, and that court can either set aside the judgment or revise the damages. If for the very same offence he were proceeded against in the police court and were convicted, he would be liable to imprisonment. In the former case, he could apply for a new trial or for a reduction of the damages, but in the latter case, directly the jury have returned a verdict he has no appeal. I do not see any principle upon which that rests. I do not see any principle upon which the judgment of a judge or verdict of a jury in the first instance should be final and conclusive. I respect the judgment of juries. Juries are sometimes led away, and at times judges make mistakes. How often have we seen the decisions of judges set aside, not only in this colony, but in the other colonies and in England as well? That admits the principle that judges are liable to err on the civil side of the court. On what principle, therefore, can we say that they cannot err on the criminal side of the court? I was at first opposed to the Bill on the ground that every dissatisfied prisoner might appeal, but the answer to that is obvious. A prisoner would soon be tired of appealing. Prisoners are generally in the hands of their legal advisers, whose advice they follow. Therefore I do not see any objection to the Bill on that account. I will tabulate this Bill under three heads. It proposes three separate proceedings. If a man is convicted and sentenced, he may appeal against the sentence, as a right; he may say that the verdict of the jury is right, but the sentence of the judge is too severe. Why should he not have an opportunity of getting the opinion of the other judges on that point? He may admit his guilt, but he may consider the punishment measured out to him to be too great. Under these circumstances, I think he ought to have the right of appeal, under certain conditions, to the judges. It is difficult in the administration of justice, not only in this colony, but in the other colonies, and even in England, to avoid disparity between the sentences imposed by one judge and the sentences imposed by another. I have known judges give two years, or only twelve months, for an offence for which another judge would give ten years. The Legislature is always anxious as far as possible to regulate the punishment to the crime. For that reason the Acts were codified, and an endeavour was made to attain the end sought by this Bill, in another way. The Act provided that every offence for which a sentence of over five years was imposed should be deemed a felony, and that every offence for which a sentence of less than five years was imposed should be deemed a misdemeanour. Upon a conviction for felony, the court could award a punishment of five years only, if throughout the hearing of the case there were extenuating circumstances, to the satisfaction of the judge. That was one way of dealing with the point. If there were extenuating circumstances the punishment would be only five years. That principle has worked fairly well, but there is still a disparity in the sentences, and always will be, and we should endeavour to remove it as far as possible. This Bill will assist us in doing so, and I see no objection to it on that ground. First the prisoner may apply to the court and ask it to reduce his sentence. The court may either reduce or increase it after hearing the arguments. Under the law at present, a prisoner has a right to ask a presiding judge to state a case on a

question of law, and only upon a question of law. That is a good sound principle, which has been in force in nearly all British communities for many years. The Bill does not amend the Act at all in that respect. With regard to appeals against the decisions of juries, this Bill directs a rehearing and substitutes a new departure. I would have voted against it because I think that if a jury has tried the case the prisoner should be satisfied; but when I saw Clause 3 of the Bill, my objection was annulled. That clause provides that appeals can be made against the hearing of the jury only with the consent of the Attorney General. If the Attorney General does not consent, there will be no appeal. I think hon. members will be perfectly safe in leaving the matter in his hands. My impression is that there will not be one appeal in ten years. People are generally satisfied with the verdict of juries. I have only known of one case in which I considered the verdict in error and the sentence too. That was a case in which the Attorney General would have allowed an appeal, as the Crown afterwards liberated the prisoner, thus showing that the verdict was admitted to be wrong. In that case the Attorney General, on his own motion, was allowed to overrule the trial by the jury, and the decision of the judge. Such a case would be met by this Bill. When I say I approve of the Bill, I reserve the right to move amendments in committee. I see that no appeal is allowed in capital cases. It seems to me that if an appeal should be allowed in any case, it should be allowed in capital cases. In cases of rape, for example, there should be a right of appeal to the Attorney General. A man was convicted of rape and sentenced to death. Subsequently the Executive decided not to carry out the capital sentence, but to convert it into imprisonment for life, the first three years in irons. That is a pretty severe sentence, which meant that the man would never get out of prison again. But after the man had been a short time in prison, it was found the woman was a prostitute, and utterly unreliable. Instead of calling on the Executive to decide in that case, there might have been an appeal with the consent of the Attorney General. Judges in the Court of Appeal would never interfere with the verdict of a jury, except on the broad ground that the verdict was violently opposed to the evidence. There is a provision in the Bill to allow subsequent evidence to be brought forward, in order to enable the court to do justice; and the right of appeal is hedged in by the sufficient condition that it can only be exercised with the consent of the Attorney General, who is really the prosecutor in the case. That condition is very much the same as if a plaintiff, having recovered a verdict of £1,000 against a defendant, was asked by defendant to be allowed to appeal. The word "court" will require some definition; and I would suggest that after the second reading has been approved, the consideration in committee be deferred for three or four days. The Circuit Courts Bill, introduced by the Government, may seriously affect the wording of the Bill now before the House. The present Bill only refers to persons convicted before the Supreme Court; but if the Circuit Courts Bill is passed, justices in the country will have the power to pass sentences of 10 or 15 years' imprisonment; and surely it will be more necessary to have the right of appeal in such cases, than in the case of sentences passed by judges. As provided in all similar Acts, convicts on ticket-of-leave should not be given the right of appeal. The judge, who originally tries the case, should not sit in the Appeal Court. He could not be expected to change his mind; and rather than allow that judge to sit, it would be better to have only two judges. Again, if there were three judges sitting they might all differ, and there ought to be a provision that the original sentence should stand, unless two judges concurred in setting it aside. With these slight amendments, the Bill might very well be allowed to pass. I congratulate Mr. Kidson on the introduction of this measure which, in the opinion of legal members generally, I believe will do a great deal of good.

HON. D. M. McKAY: So far as I understand the Bill, I give it my support, and I am of opinion that the country would have done very well with a similar measure some time back. I have had some experience, which leads me to the opinion that this Bill is necessary.

Question put and passed.

Bill read a second time.

IMMIGRATION RESTRICTION BILL.

IN COMMITTEE.

Clause 1—agreed to.

Clause 2—Exemptions:

HON. A. B. KIDSON asked what was the meaning of the words, "or by a scheme approved by the Governor." Under what authority would "a scheme" be initiated?

THE MINISTER OF MINES (Hon. E. H. Wittenoom): It was impossible to answer this question without notice. Perhaps Mr. Haynes would assist him in seeing this measure through committee.

HON. R. S. HAYNES, in reply to Mr. Kidson's question, said the scheme would be under the authority of Clause 16, which gave the Governor-in-Council power to make regulations.

Put and passed.

Clause 3—Prohibited immigrants:

HON. A. P. MATHESON: If all the colonies were to pass a similar measure, it would, under this clause, be impossible to land any person suffering from a "loathesome or dangerous contagious disease" anywhere, and such a person would have to be taken back in the ship, and might possibly die. When there was a quarantine station this seemed an extremely inhospitable provision.

HON. H. BRIGGS: The clause was no doubt intended to apply more particularly to lepers, with the return of whom to their native countries the colony had had some trouble.

HON. R. S. HAYNES: The whole object of the Bill was to keep undesirable people out of the colony, and people suffering from a "loathsome or dangerous contagious disease" were undoubtedly undesirable. The disease must not only be contagious, but must also be dangerous, and the Governor-in-Council would define by regulations what were "dangerous contagious" diseases.

THE MINISTER OF MINES: The Government ought to have power to stop persons suffering from leprosy or smallpox from coming into the colony.

Put and passed.

Clause 4—Unlawful entry of prohibited immigrants:

HON. A. B. KIDSON moved, as an amendment, that the words "liable in addition to any other penalty to be" be struck out, in the third line after "be"; that in the fifth and sixth lines the words "for not more than six months" be struck out; and that all the words after "labour" in line six be struck out to the end of the clause. The object of the amendment was to make it imperative that undesirable immigrants be removed, and kept in prison until removed.

HON. R. S. HAYNES: Under the amendment, a man might be kept in prison for ever. The Government could be relied upon to deport an undesirable immigrant, and the object of the clause was that such an immigrant should not be kept more than six months.

HON. A. B. KIDSON: The difference between the clause and the amendment was that the former left the removal of the undesirable immigrant optional, whereas the amendment made it imperative. To leave the removal of the undesirable immigrant optional would be to absolutely defeat the intention of the measure.

HON. A. H. HENNING asked by whom the undesirable immigrant was to be removed, and by what penalty on the Government was the imperative provision to be enforced. The amendment really resulted in an absurdity.

THE MINISTER OF MINES: Too much was being made of this clause, seeing that the whole principle of the Bill was contained in Sub-clause (*a*) of Clause 3, which provided for the educational test. The matter had better be left in the hands of the Government, who had, by the introduction of this Bill, shown their intention of keeping out undesirable immigrants. This Bill was prepared on the lines of a Natal Act, which had met with the Imperial sanction, and unless we keep somewhere within the limits of that Act, the Bill would have to go to England, and Imperial sanction might be refused. If the Government were not sincere, he would welcome any amendments, and the more monstrous the better, because they would ensure that the Bill would not be assented to; but the Government were sincere, and he asked hon. members therefore not to interfere with the Bill more than they could possibly help. It had been considered by the direct representatives of the people—who represented the working people of the colony, those who were most interested in the stoppage of these immigrants—and he hoped that what they had assented to would not in any way be imperilled by the action of this committee.

HON. A. B. KIDSON said he would withdraw his amendment.

THE CHAIRMAN said there was no amendment before the committee, as he had ruled the other night that none would be received unless in writing.

Clause put and passed.

Clause 5- Entry permitted on certain conditions:

HON. A. B. KIDSON moved that the figures 50 be added to the figures 100, to make the number read 150.

THE CHAIRMAN: The amendment was out of order.

Clause put and passed.

Clause 6—Persons possessed of property in the colony or domiciled there:

HON. A. P. MATHESON: This clause seemed most extraordinary, and though he recognised the undesirability of tinkering with the Bill, he thought this clause went very far to undo its value, in respect to the most dangerous members of the coloured races—those who owned a certain amount of money. This clause provided that every person who should satisfy the Colonial Secretary, or an officer appointed under the Bill, that he was possessed of, or entitled to real estate of the value of £300 in this colony should not be deemed a "prohibited immigrant." The "prohibited immigrants" were defined in Clause 3, to which there were 6 sub-sections. Sub-section *(a)*, Clause 6, released any person who for 2 years had owned property to the value of £300 in the colony, from the operation of Clause 3. That was to say, any person who was unable to write in the characters of any language in Europe a passage in English of fifty words, or any idiot, or an insane person, or any person suffering from a loathsome or contagious disease, or any person who, within three years, had been convicted of felony, or infamous crime, or misdemeanour involving moral turpitude, or any prostitute, or any person living on the prostitution of others, would be enabled to come to this colony provided such person had real estate here to the value of £300. He failed to see why a person who was considered undesirable on any of those grounds should be admitted because chance had given him £300 of real estate. He moved that this clause be struck out.

THE MINISTER OF MINES: Clause 6 only applied to coloured people who had owned real estate in the colony for two years. He did not suppose there would be very many, and if they had taken enough interest in the colony to have accumulated that amount of real estate, he did not think they would be altogether undesirable people to be here. If a man were suffering from a loathsome or contagious disease, he would be prevented from entering by the Medical Act. The clause might, perhaps, be amended to meet the views of the hon. member to a certain extent. The idea was that this legislation should not be retrospective in character, and therefore a person who was or had been formerly domiciled in the colony, and possessed of a certificate from the Colonial Secretary authorising him to return to the colony, was not to be deemed a prohibited immigrant. Possibly the clause was well protected by the *(c)*, *(d)*, *(e)*, *(f)* sub-clauses. It might perhaps be improved, and he was willing to accept any reasonable amendment.

HON. R. S. HAYNES: There was some force in what Mr. Matheson had said; and in order to meet the objection, he moved that after the word "Act," in the second line, the following words be inserted: "that he does not come within the meaning of any of the sub-sections *(c)*, *(d)*, *(e)*, or *(f)* of the third section of this Act and;" also that the same words in sub-clause *(b)*, lines 2, 3, and 4, be struck out."

HON. A. P. MATHESON said he would vote for the amendment of Mr. Haynes, because it was a good improvement on the Bill as it stood; but he hoped the committee would support him in striking out Clause 6 altogether.

Amendment (Mr. Haynes's) put and passed, and the clause, as amended, agreed to.

Clauses 7 to 15, inclusive—agreed to.

Clause 16—Regulations:

HON. R. S. HAYNES moved, as an amendment, that after the word "fishery," in the 4th line, the words "or upon the Abrolhos Islands" be inserted. This would enable the Governor to make regulations for the employment of coloured labour on these islands, in the same way as he could make regulations in reference to the pearl fishery. As to the educational test for undesirable immigrants, there was no doubt schools would be established at Singapore, and the Chinese

would learn to write English as readily as possible. The argument that the introduction of coloured labour would tend to the deterioration of the English race was all humbug. The true objection was that those races worked harder and for less money than the whites. He objected to restrictive legislation; but he was in that House to carry out the wishes of the majority. The Abrolhos Islands were about 60 or 80 miles out in the Pacific Ocean, and the coloured labourers there employed, who could not possibly get to the mainland, were necessary to the guano industry. If coloured labour were not allowed on those islands, the price of guano would become almost prohibitive to agriculturists.

HON. C. E. DEMPSTER: To prohibit coloured labour on the Abrolhos Islands would simply mean shutting up the important industry of guano gathering.

HON. W. ALEXANDER: The amendment was a necessary one, because it was impossible to get Europeans to undertake the disagreeable work which was conducted on the Abrolhos Islands.

HON. D. M. McKAY said he had much pleasure in supporting the amendment.

Amendment put and passed.

HON. A. B. KIDSON moved, as a further amendment, that between the words "shall" and "have," in the 17th line, the words "if not inconsistent with this Act" be inserted. The reasons for the insertion of similar words in other measures had been given on many occasions.

Put and passed, and the clause as amended agreed to.

Clauses 17 and 18—agreed to.

Clause 19—Saving of Act 48 Vict., No. 25; and the Pearl Fishery:

HON. R. S. HAYNES moved, as an amendment, that after the word "fishery," in the sixth line, the words "or upon the Abrolhos Islands" be inserted; further, that in the same line, after the word "fishery," the words "or on such islands" be inserted. These were consequential amendments.

Amendments put and passed, and the clause, as amended, agreed to.

Clause 20—agreed to.

Schedule—agreed to.

Preamble and title—agreed to.

Bill reported with amendments, and report adopted.

ADJOURNMENT.

The House adjourned at 9·50 p.m. until the next day.

Legislative Assembly,

Tuesday, 7th December, 1897.

Papers presented—Question: Supply of Clothing to Railway Department—Auctioneers Act Further Amendment Bill: third reading—Public Notaries Bill: third reading—Circuit Courts Bill: third reading—Workmen's Lien Bill: third reading—Roads and Streets Closure Bill: in committee—Annual Estimates, 1897-98: Treasury Estimates further considered in Committee of Supply; Division on Defence vote; Division on Central Board of Health vote—Steam Boilers Bill: first reading—Adjournment.

THE SPEAKER took the Chair at 4·30 o'clock p.m.

PRAYERS.

PAPERS PRESENTED.

By the PREMIER: Reports of Inspectors of Rabbits, 1897. Return showing particulars of Volunteers' trip to Albany.

Ordered to lie on the table.

QUESTION—SUPPLY OF CLOTHING TO RAILWAY DEPARTMENT.

MR. ILLINGWORTH, for Mr. Oldham, in accordance with notice, asked the Commissioner of Railways:—1. Why tenders were not called for the supply of clothing for the men employed in the Railway Department. 2. Why the contractor who held the contract was allowed an extension of two years. 3. Whether the original contract was carried out in accordance with the conditions supplied under which all tenders were received.

THE COMMISSIONER OF RAILWAYS (Hon. F. H. Piesse) replied:—1. There were exceptional circumstances which led the Government to extend the